

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

Plaintiff,

vs.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS,
INC. D/B/A FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION,
EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. AND JENNIFER
McCONNELL, D.C.

Defendants.

CIVIL ACTION NO.:

05 - 11693 RCL

PLAINTIFF'S EX PARTE MOTION FOR ATTACHMENTS
BY TRUSTEE PROCESS

The plaintiff, Encompass Insurance Company of Massachusetts (hereinafter "Encompass"), pursuant to Rule 64, Fed R. Civ. P., and the applicable provisions of Rule 4.2, Mass. R. Civ. P., respectfully requests that this Court enter an Order approving the attachment of any goods, credits and effects including, by way of illustration and not limitation, checking accounts, savings accounts, joint accounts, and brokerage accounts of the defendants in the possession or control of the following Trustees (and any later identified Trustees):

- **Enterprise Bank & Trust Company;**
- **Citizens Bank;**
- **TD BankNorth;**
- **Sovereign Bank;**
- **Northern Bank & Trust Company;**
- **Bank of America;**
- **Eastern Bank;**

- **Lowell Co-Operative Bank;**
- **Salem Five Cents Savings Bank; and**
- **Donald Lassman (duly appointed Receiver of 13 Kidder Road Realty Trust, First Health Products, Inc. and Robert T. Kennedy, Inc.)**

up to the amount of ONE MILLION EIGHT HUNDRED SEVENTY SIX THOUSAND ONE HUNDRED FIFTY EIGHT DOLLARS (\$1,876,158.00).

The plaintiff has filed a civil action against the defendants asserting claims under, inter alia, 18 U.S.C. §1962, et seq., Mass. Gen. Laws ch. 93A, including civil conspiracy, common-law fraud and breach of contract. The plaintiff seeks actual compensatory damages in an amount of SIX HUNDRED TWENTY-FIVE THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS (\$625,386.00) trebled pursuant to 18 U.S.C. §1964 and Mass. Gen. Laws ch. 93A (\$1,876,158.00) together with reasonable attorneys' fees and costs of this suit.

The fraudulent activities of the defendants are described in the plaintiff's Complaint as well as the Affidavits of Michael Bruno and Michael Frustaci, D.C. As the Complaint and Affidavits demonstrate, there is a reasonable likelihood that the plaintiff will recover Judgment, including interest and costs, in an amount equal to or greater than the amount of the Attachment sought by the plaintiff.

The Judgment sought by Encompass is not the result of an ordinary contract dispute or tort injury. Encompass' damages are the result of the defendants knowing participation and conspiracy to defraud Encompass. The defendants' scheme to defraud has caused Encompass to pay substantial sums of money in reliance upon the defendants' false medical documentation.

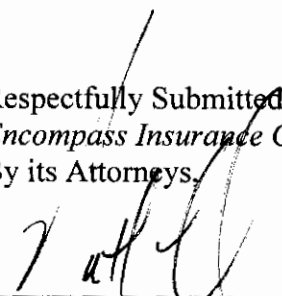
Encompass has no knowledge of the existence of any liability insurance available to the defendants to satisfy any Judgment against the defendants in this action. (See

Certificate of No Liability Insurance filed herewith). Encompass has no reason to believe that any liability insurance will be available to satisfy a Judgment in this matter as the Complaint alleges intentional, fraudulent conduct.

As further grounds for this motion, Encompass respectfully directs the Court's attention to the Memorandum of Law and supporting Affidavits of Michael Bruno and Michael Frustaci, D.C., filed together herewith.

WHEREFORE, because the defendants, as conspirators, will be liable, individually, jointly and severally with one another should the plaintiff prevail, and because there is a reasonable likelihood that the plaintiff will recover Judgment, including interest and costs, in an amount in excess of the Attachment by Trustee Process requested herein, along with the absence of any available liability insurance, the plaintiff respectfully requests that this Court enter an Order approving the Attachments by Trustees Process on any goods, credits and effects in which the defendants have any interest, in the hands and possession of the Trustee up to the amount of ONE MILLION EIGHT HUNDRED SEVENTY SIX THOUSAND ONE HUNDRED FIFTY EIGHT DOLLARS (\$1,876,158.00).

Respectfully Submitted
Encompass Insurance Company,
By its Attorneys,


Richard D. King, Jr., BBO No.: 638142
Nathan A. Tilden, BBO No.: 647076
David O. Brink, BBO No.: 547370
SMITH & BRINK, P.C.
122 Quincy Shore Drive
Quincy, MA 02171
Tel: (617) 770-2214

Dated: August 16, 2005